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January 18, 1993

JAN 19 1993

Office of the Secretary Federal Communications Commission Washington, DC 20554 FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ATTENTION: Donna Searcy

Re: In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992 -Broadcast Signal Issues - MM Docket No. 92-259

Reply Comments of Comcast Corporation

Dear Ms. Searcy:

Enclosed please find original and five copies of Reply Comments submitted by Comcast Corporation in connection with the above-referenced Docket.

Sincerely,

THOMAS R. NATHAN

Deputy General Counsel

Thomas R. Trath

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Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

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In the Matter of) OFFICE OF THE SECRETARY
Implementation of the Cable Television Consumer Protection and Competition Act of 1992)) MM Docket No. 92-259)
Broadcast Signal Issues))

REPLY COMMENTS OF COMCAST CORPORATION

In our Comments in this Docket, we proposed that the primary goal of the Commission in fashioning its signal carriage rules should be to minimize viewer confusion and dissatisfaction. The Commission has received divergent recommendations as to how it should implement the various issues raised in the Notice of Proposed Rulemaking, but on this point there appears to be little disagreement.

We noted with particular interest that similar comments were made by a number of broadcasting entities in connection with the Commission's query regarding the interplay of Sections 614 and 325(b)(4) of the 1992 Cable Act. Contending that the provisions concerning must carry and retransmission consent are complementary, they propose that Section 614(b)(4) mandates a full-time signal carriage regardless of whether must carry or retransmission consent is elected. INTV states this is necessary because "piece-meal"

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¹Carriage of only part of the station's broadcast day is referred to by these commenters as "cherry-picking".

signal carriage confuses and frustrates viewers."² NBC asks the Commission to "conclude that there is a <u>public</u> interest in assuring that to the extent a station is carried either (sic) by consent election, the cable subscribing public has access in its entirety to the same program schedule that the over-the-air members of the public receive."³

While we dispute that there is legal merit to this proposition⁴, we concur with the underlying notion that the Commission should be tailoring rules which serve the best interest of television viewers rather than the parochial interest of either broadcasters or cable operators. We also agree that cherry-picking can be a source of viewer dissatisfaction.

²Comments of the Association of Independent Television Stations, Inc. at 21-22.

³Comments of the National Broadcasting Company, at 13 (emphasis in original).

⁴This argument evidently proceeds from internal inconsistencies contained within Section 614. But whether the language of Section 614 is internally consistent or not is quite beside the point in light of Section 325(b)(4) which commands:

[&]quot;If an originating television station elects under paragraph 3(b) to exercise its right to grant retransmission consent under this subsection with respect to a cable system, the provisions of Section 614 shall not apply to the carriage of the signal of such station by such cable system."

Congress could not more clearly articulate that sections 614 and 325 were free-standing and mutually exclusive. Whatever rights are granted under Section 614 are extinguished by an election to proceed under Section 325.

But cherry-picking takes many forms and the Commission must be concerned with all of them. Allowing a station to withhold its signal from some communities within its market is cherry-picking of the worst kind. It is hard to imagine anything more disruptive to viewer satisfaction than allowing a television station to create arbitrary, ad hoc blackout zones. As NCTA points out, this could lead to the unfortunate situation of viewers being used as pawns in the negotiations between broadcasters and cable operators. The Commission can prevent such a situation from occurring by requiring stations to make their election for either must carry or retransmission consent on an ADI-wide basis.

It has been the longstanding Commission policy that a broadcaster is granted a valuable and scarce public commodity and therefore has an obligation to make its signal equally available to all viewers within its service area. It should not now retreat from that position and enable a station to choose to serve only portions of its market.

Respectfully submitted,
COMCAST CORPORATION

THOMAS R. NATHAN

Deputy General Counsel

Dated: January 18, 1993

⁵Comments of The National Cable Television Association at 26-27.

 $^{^6}$ In re Application of KTVO, Inc., 39 RR 2d 1551 (1977).